FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71011/2016-EX[DB] dated 24/10/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/2064/2007	**TEJ SHOE TECH** 10TH-11TH K.M. STONE,AGRA MATHURA ROAD,ARTONI AGRA,UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Kanpur 117/7...SARVODYA NAGAR, KANPUR, UTTAR PRADESH-208005

Copy To

3Advocate(s) / Consultant(s):

SH K.K.ANAND,ADV
A-103, DEFENCE COLONY
NEW DELHI.

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512 B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi 110032
14 C.D.R. ✓15 Office Copy ✓16 Guard File

Asstt. Registrar

23-11-16

ISSUED ON

SECN. (DISPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No. E/2064/2007 (DB)

Arising out of Order-in-Original No.3/Commr/Tech/REM/2007 dated 30.03.2007 passed by Commr. of Central Excise, Kanpur

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H.K. Thakur, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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Tej Shoe Tech, Agra .. **Appellant**

Vs.

C.C.E., Kanpur .... **Respondent**

Appearance:

Present Shri K.K. Anand and Ms. Surabhi Sinha for appellants
Present Shri Pawan Kumar Singh (Supdt.) (A.R) for the respondent/Revenue

Coram: Hon'ble Mr. Anil Choudhary, Judicial Member
Hon'ble Mr. H.K. Thakur, Technical member

DATE OF HEARING & PRONOUNCEMENT : 21. 01. 2016

Final ORDER NO. 71031/2016

Per Anil Choudhary:

The appellant, M/s Tej Show Tech., Agra, is in Appeal against the Order-in-Original No.3/Commr/Tech/REM/2007 dated 30.03.2007 passed by Commr. of Central Excise, Kanpur.

2. This appeal is filed by Tej Shoe Tech, Agra against an Order-in-Original dated 30/03/2007 passed by Commissioner, Central Excise, Kanpur whereby the claim for remission of duty on the goods destroyed in fire accident have been rejected under Rule 21 of CER, 2002 read with Section 38A of the Central Excise Act, 1944 and further confirming the duty amount of Rs. 43,98,638/-, being an amount claimed towards remission alongwith interest. The learned Commissioner has also observed that the remission claimed is not supported by any documentary evidence. Further, the appellant has failed to submit first information regarding fire within 24 hours of the happening of the incident and thereby Central Excise Officers were not able to verify the loss on the spot. Further, the fire accident on 16/10/1998 occurred due to fire accident which started in the nearby factory of M/s. Jandiyal Shoe Factory, Agra, remission claim is not supported by any statutory records as regard the loss, as claimed and the damage have been calculated on the basis of assumption and presumption only. Further, it is held that the appellant's contention that the fire incident was due to unavoidable accident, is not sustainable, as the fire which started in the nearby factory due to electric short circuit on 16/10/1998

at around 14:00 hours and spread to the appellant's premises later on. The Chief Fire Officer, Agra in his report dated 31/12/1998 although discussed the timing of fire accident in the nearby factory but did not mention time of fire accident which took place in the appellant's premises on the same day. Further in the Fire Officer's report, there is also no mention of any fire fighting equipment and their use by the appellant at the time of fire accident. Moreover, appellant intimated in the remission application addressed to the Commissioner through his letter dated 02/11/1998 that he had informed that they saved some finished goods, before the fire spread to his premises. This clearly indicates that appellant had sufficient time to save his goods and statutory records from the fire, but he failed to do so, which shows his negligence and carelessness. Further concluding that the arrangement of safety and security of excisable goods and the statutory records in the factory were not sufficient and proper, to prevent occurrence of fire, held that the fire accident cannot said to have occured due to reasons beyond the control of the appellant.

3. The issue for consideration in this appeal by this Tribunal is whether the fire which occurred in the appellant's premises, which originally started in the adjoining factory and later on spread to his factory, was an unavoidable accident and can be said to have occured due to the reasons beyond control of the appellant and secondly, whether the appellant is entitled to the remission, as claimed by him.

4. The undisputed facts are that due to electric short circuit in the adjoining shoe factory of M/s. Jandiyal Shoe Factory, situated at Indra Mills Compound, Jeoni Mandi, Agra, caught fire at about 14:20 hours on 16/10/1998. The fire increased profusely and spread to five adjoining shoe factories including that of the appellants on the same day. According to the report of Chief Fire Officer, Agra, the fire occurred on 16/10/1998 at 14:20 hours when information was received at the Fire Station and the Fire Brigade immediately left for control of the fire. It is also stated in the report that damage occurred to the buildings and accommodations. Further reason for starting of the fire is stated to be electric short circuit which started in the adjoining M/s. Jandiyal Shoe Factory and soon spread to the other factories including the factory of the appellants. The Fire Department pumped water, foam etc. for about 63 hours and only thereafter they could control the fire. Further the fire increased several folds, due to presence of raw material etc. which were in huge quantity, and inflammable in nature. Further, blast occurred in the premises of M/s. Jandiyal Shoe Factory and the fire spread profusely. It is further stated by the Fire Officer that the appellant's factory is located above the Golden Eagle Factory. The fire spread to Golden Eagle Factory and by breaking its roof, spread fire to the appellant's factory. It is further stated that in the fire incident in the Indra Mills Compound, Jeoni Mandi, Agra, fire occurred in the five factories which could be controlled only after several hours on deployment of huge

number of fire fighting staff and machinery. Further as per the report of the Chief Fire Fighting Officer, Agra that as the factory of M/s. Jandiyal shoe turned into an inferno, the employee of the said company could not take any effective steps to control the same. Further the inflammable materials lying in drums being raw materials, started burning profusely resulting into explosion thereby increasing the fire manifold. Further the fire started damaging the roof resulting into further increase of fire. Appellant's factory was situated above Golden Eagle Factory. Due to the intense heat and fire in the Golden Eagle Factory which resulted into explosion and blowing the roof and the same resulted in spread of fire to the appellant's factory. In the appellant's factory by the time the fire could spread, they could salvage some of the goods, but due to breaking of linter all of sudden and spreading of the flames, the fire spread to the appellant's factory resulting into the damage due to fire.

5. The learned counsel for the appellant states that the findings of the learned Commissioner that the incident of fire in the appellant's factory is not due to unavoidable accident, is erroneous and fit to be set aside in view of the explicit findings of Chief Fire Fighting Officer, Agra. It have nowhere come in the report of Fire Authority that there was any element of negligence on the part of the appellant or the appellant was operating his factory without the consent of the Fire Authority as required under the law. Further, there is no basis of the findings by the learned Commissioner that the appellant had sufficient time to

protect his goods and statutory records from the fire but he failed to do so. The same is based only on conjecture and surmises. As per the report of the Fire Officer, that soon after start of the fire in adjoining factory, the appellant and his staff took effective steps in salvaging whatever they could, which have also been taken note in the report of Fire Authority. It is further contended that the Authorised Signatory of the appellant's firm have informed the Superintendent, Central Excise, Range-III, Agra, on the date of fire over telephone and thereafter in response Mr. Pankaj Singh, Section Officer and Sri Ashok Kakkar Superintendent, visited the factory site on 17^{th}, 18^{th} and 20^{th} October, 1998. Further Mr. Manish Kumar, the then Deputy Commissioner, Central Excise, Agra also visited the appellant's factory on 17^{th} and 18^{th} October, 1998. Thus, it cannot be said that there was any negligence or delay on the part of the appellant in informing the loss due to fire immediately and expeditiously to the Excise Authorities. Further by way of alternate argument it was urged that the appellant was also eligible to avail exemption as provided under Notification No. 8/98-CE, as value of clearance during the financial year 1998-99 for home consumption was only Rs. 5,21,975/-. The appellant was eligible for full exemption of the aggregate clearance upto Rs.16,00,000/- and further eligible to duty @ 5% on the next Rs.50,00,000/- and thereafter @ 15% Adv. It was also urged that the appellant was exporting substantial portion of his production and only clearing the negligible portion in DTA. The data of clearance for export as well as for home consumption during the preceding four financial years, immediately before the fire accident, is as under :-

	Financial Year	For Export (Rs.)	For Home (Rs.)
(i)	1993-94	9,00,83,368/-	Nil
(ii)	1994-95	10,54,32,517/-	11,82,812/-
(iii)	1995-96	10,04,43,256/-	14,56,120/-
(iv)	1996-97	16,12,30,175/-	1,48,585/-

6. Accordingly, it is urged that evidently the goods manufactured for export got destroyed in fire. Thus, demanding duty on destroyed goods which were meant for export by rejecting the remission claim is also against the policy of Government of India. Accordingly, the learned counsel urges for allowing the appeal with consequential benefits.

7. Learned A.R. for Revenue has relied on the impugned order.

8. Having considered the rival contentions, We find that the learned Commissioner have erred in holding that the fire accident was avoidable and was due to negligence and carelessness on the part of the appellant. In view of the categorical finding of Chief Fire Fighting Officer, it is an unambiguous conclusion that the fire started in the adjoining factory of M/s. Jandial Shoe Factory thereafter spread to the adjoining factory of Golden Eagle Shoe and from their pursuant to caving in of the roof the fire spread to the appellant's factory and immediately engulfed the whole factory. We have further found that the appellant had given timely notice to the Excise Authorities and hence, no case of negligence is made out against him which could have prevented the Excise Authorities in verifying the accident and/or loss. We also find that rejection of quantum of loss is also erroneous and no reasons have been given for the same. In case of fire where

everything is lost, the loss is to be estimated on the basis of some parameters and on past records. Accordingly, I set aside the impugned order and allow the appeal. The appellant is held to be entitled to remission claim, as made before the ld. Commissioner along with the consequential benefits, if any.

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Patel/-

प्रमाणित प्रति / Certified True Copy

16.11

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001